



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,113	12/20/2001	Kenneth Ouriel	CCF-5814	3220

26294 7590 09/12/2003

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.  
526 SUPERIOR AVENUE, SUITE 1111  
CLEVEVLAND, OH 44114

EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/028,113

Applicant(s)

OURIEL ET AL.

Examiner

Michael Thaler

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 68-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3731

Claims 68-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 5.

Claims 1-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 21, 41 and 57 are confusing and inaccurate since furcated second end is not substantially free of an expandable support member. As best seen in figure 13, expandable support member 194 is within and is secured to branch 64 of the furcated second end. In fact, barbs 202 of expandable support member 194 pass through the wall of branch 64 of the furcated second end. In claim 66, line 2, "tapered...outward" is self contradictory since "tapered", by definition, involves a reduction rather than an increase in the width of an object.

Claims 1, 6-9, 11-14, 41, 43-49 and 57, 59 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Pinheiro (5,851,228). Pinheiro, in figure 5, shows first end (the right end as shown in the figure) having means 40 for laterally supporting the first end (col. 4, lines 45-59), furcated second end (the left end as shown in the figure) including at least two branches, each

Art Unit: 3731

of the two branches including a longitudinal support means 49 and anchoring means 20a, 25. The limitation in claim 1, for example, "said furcated second end being substantially free of an expandable support member" is inaccurate as set forth in the paragraph above. As to claims 6, 44 and 57, struts 40 constitute a radially expandable stent.

Claims 2-5, 10, 42 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Chevillon et al. (2003/0065378). Pinheiro fails to disclose that the inner surface facilitates non-turbulent flow. However, it was well known in this art that supporting stents may be fixed to the outside rather than the inside of grafts with the self-evident advantage of providing smoother flow within the graft. For example, Chevillon et al. teaches that supporting stents 5 may be fixed to the outside rather than the inside of graft 3. It would have been obvious to so locate the Pinheiro supporting means so that it too would have this advantage.

Claims 6, 15-17, 19, 44, 50-52, 54, 61-63 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Anidjar et al. (6,036,723). As to claims 6 and 44, assuming *arguendo* that struts 40 of Pinheiro are not considered to constitute a stent, Anidjar et al. teach that the

Art Unit: 3731

support means for a graft may include one or more stents (col. 6, lines 39-40) and that this arrangement has the advantage of ensuring a resistance to crushing of the graft (col. 6, lines 50-53). It would have been obvious to replace or augment struts 40 of Pinheiro with stents so that the Pinheiro graft would also have this advantage. As to claim 15, for example, Pinheiro fails to disclose outflow limbs. However, Anidjar et al. teaches that outflow limbs 10 should be attached to a bifurcated stent/graft 1 so that the flow passageways within the assembly reach the ileac arteries (col. 8, lines 48-54 and col. 9, lines 53-60). It would have been obvious to including outflow limbs with the Pinheiro bifurcated stent/graft so that it too would have this advantage.

Claims 21 and 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Wisselink (5,984,955). Pinheiro fails to disclose at least three branches. However, it was well known in this art to provide at least three branches in grafts so that various blood vessels may be connected. For example, Wisselink teaches that at least three branches may be provided in grafts so that various blood vessels may be connected (figures 1 and 1a). It would have been obvious to provide at least three branches in the Pinheiro graft so that it too would have this advantage.

Art Unit: 3731

Claims 26, 35-37, 39, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Anidjar et al. (6,036,723) as applied to claims 6, 15-17, 19, 44, 50-52, 54, 61-63 and 65 above, and further in view of Wisselink (5,984,955) for the reasons set forth in the paragraph above.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Chevillon et al. (2003/0065378) as applied to claims 2-5, 10, 42 and 58 above, and further in view of Wisselink (5,984,955) for the reasons set forth above.

Claims 18, 20, 53, 55, 64 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Anidjar et al. (6,036,723) as applied to claims 15, 50 and 61 above, and further in view of Goicoechea et al. (6,051,020). Goicoechea et al. and Anidjar et al. fail to disclose a taper on the outflow limbs. However, Goicoechea et al. teach that the ends of outflow limbs and other vascular graft members (e.g. at 40 or 72) should be tapered (at 42 or 82) in order to facilitate connection with other grafts or natural vessels (col. 11, lines 45-49 and col. 12, lines 12-15). It would have been obvious to make the ends of the Anidjar et al. outflow limbs (incorporated into the Pinheiro device) tapered so that it too would have this advantage.

Art Unit: 3731

Claims 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinheiro (5,851,228) in view of Anidjar et al. (6,036,723) and Wisselink (5,984,955) as applied to claims 26, 35-37, 39, 56 and 57 above, and further in view of Goicoechea et al. (6,051,020) for the reasons set forth in the paragraph above.

Applicant's arguments filed August 25, 2003 have been fully considered but they are not persuasive for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Art Unit: 3731

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
September 9, 2003



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731